

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Association of Keene Tutors, NEA-NH

Petitioner

v.

Keene School District

Respondent

*
*
*
*
*
*
*
*
*
*
*

Case No. T-0414

Decision No. 2001-096

REPRESENTATIVES

For the Petitioner:

Mary E. Gaul, Director, Monadnock Region, NEA-NH

For the Respondent:

Douglas S. Hatfield, Esquire

Also Appearing:

Patricia Trow Parent, Manager of Personnel Services
Deborah Davis Young, Tutor

BACKGROUND

The Association of Keene Tutors (the "Petitioner") filed its petition on June 22, 2001 for recognition as the exclusive bargaining representative for all tutors employed by the Keene School District (the "District"). The District filed its responsive pleading with the PELRB on July 3, 2001 that, while not stating a direct objection to the organization of this group of employees, expressed its position seeking to have the petitioning unit of tutors made a part of an existing bargaining unit comprised of teachers and other similar

professional employees within the District. The matter was initially scheduled to be heard on July 24, 2001 but, upon a mutual request of the parties for a continuance that was filed on July 20, 2001, the evidentiary hearing was postponed until August 28, 2001. On August 24, 2001 the parties filed a Mutual Stipulation of Facts that also incorporated by reference a statement of the petitioner's representative on behalf of the existing teachers' bargaining unit, namely, the Keene Education Association. Relevant portions of the parties' stipulation are incorporated into the findings of fact as appear below. Both parties and their respective representatives appeared and participated in the proceedings before the Hearing Officer on that date.

At the outset of the hearing, it was agreed by the parties that the statement submitted on behalf of the teachers unit would be accepted into the record. Also, it was acknowledged that the Mutual Statement of Facts would also become part of the record. Following the submission of exhibits and provision of testimony the Petitioner submitted requests for findings of fact and rulings of law at the conclusion of the hearing. The record was left open at the conclusion of the evidentiary hearing for a period of ten (10) days to allow both parties to submit additional requests and a period of twenty (20) days to submit a legal memorandum to support their respective positions. Post hearing submissions were received from the Respondent and the record was closed on September 18, 2001.

FINDINGS OF FACT

1. The Keene School District (District) employs persons to carry out the functions of educational tutors within the several schools within its district and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The Association of Keene Tutors (Petitioner) seeks to become the exclusive bargaining representative of a proposed bargaining unit comprised of certain employees of the District who perform work as tutors within the Keene School District.
3. Both the public employer and the petitioning employee unit agree that the proposed unit members, i.e. tutors, share a community of interest, in accordance with RSA 273-A:8 I (a), (b), (c), and (d), with the exception that tutors are hourly paid employees.
4. The District raised no objections to the inclusion of any prospective member on the basis of supervisory authority or confidential status.
5. The parties stipulated to the inclusion of a "Statement of Mary E. Gaul" into the record in lieu of testimony by members of the Keene Education Association (hereinafter referred to as "KEA"). In sum, that statement opposes the accretion of the proposed tutors into the existing KEA.

6. Patricia Trow Parent has been employed with the District for seventeen years, is the Manager of Personnel, and has the responsibility of dealing with collective bargaining and labor relations issues District-wide and including negotiations with six existing units comprised of various groups of employees within the Keene schools.
7. Three of the existing units represent hourly employees in the categories of paraprofessional, custodial and secretarial employees.
8. The unit proposed to be formed and the existing Keene Education Association have the same bargaining representative, i.e. NEA-NH. This is a factor that should facilitate the scheduling of negotiations.
9. The KEA has already initiated and conducted substantial negotiations with the District for a successor collective bargaining agreement to its present one with the District that expires on June 30, 2002.
10. The KEA has a mature relationship with the District having negotiated collective bargaining contracts with the District since 1972.
11. Ms. Parent testified that the District opposed the creation of a new unit comprised of tutors because she felt it would be in the best interest of the District if the proposed unit were merged with the existing KEA.
12. Under cross-examination, Ms. Parent admitted that the District's computer system adequately accommodated the calculations required by negotiations with the existing paraprofessional bargaining unit and other hourly employees in other municipalities within the District.
13. Ms. Parent testified that modifications to the programming of the District's computer would have to be made depending on what benefits were negotiated by any bargaining unit and admitted that that would be the case with any benefits or data retention that would be required of any negotiation with any group.
14. Any computer modifications that may be required by the creation of an additional unit would be minimal.
15. Merger of the proposed unit with the existing Keene Education Association would cause issues already negotiated to be reopened, generate a significant number of proposals addressing the needs of a new group of employees that would unnecessarily and undesirably complicate negotiations, and unduly delay the pace and substance of the present negotiations of the KEA with the District.

16. Testimony directed to the extent to which the addition of a seventh bargaining unit would effect the operation of the district and complicate the negotiations with all bargaining units differed between the parties. The Hearing Officer found the issues raised by the Petitioner to be more convincing under the circumstances of this case.
17. Ms. Parent also testified as to the administrative effect of the creation of an additional unit of employees for purposes of collectively bargaining. Her testimony was not sufficiently convincing that creation of a separate bargaining unit comprised of tutors would, in reality, reduce the efficiency of government operations, prevent utilization of the District's computer to generate payroll, personnel wage and benefit data or unduly prevent scheduling of negotiation sessions.
18. Ms. Parent's testimony, as well as Ms. Gaul's statement submitted by agreement, each raise the concern that negotiations with the Keene Education Association might be adversely affected by the operation of so-called Senate Bill No. 2, that implicitly uses an earlier budget submission date, if negotiations of issues had to be delayed to accommodate the expanded interests of tutors.
19. Ms. Deborah Davis-Young is a tutor in the Fuller Elementary School and testified that she has never been subject of a written evaluation and did not think any other tutor had either. That testimony was the only significant testimony provided that addressed the relationship of the proposed unit members' "community of interest" with the established "community of interest" of the more professional KEA.
20. There are approximately 98 tutors in the proposed unit and approximately 321 members in the present Keene Education Association.

DECISION AND ORDER

The Public Employee Labor Relations Board is empowered by the provisions of RSA 273-A:8, I, to determine the appropriateness of proposed bargaining units and the modification of an existing bargaining units. Its determination is based upon the facts of each situation presented to it. See Appeal of Town of Newport, 140 N. H. 343, 352 (1995). In the present matter, the PELRB has before it a petition for certification of approximately ninety-eight tutors that are employed within the Keene School District filed pursuant to RSA 273-A:10. The parties have stipulated to the existence of a community of interest among these tutors sufficient to meet statutory requirements of RSA-A:8, and the district raises no objection based upon either the supervisory or confidential exclusions allowed under our controlling statute.

Instead, the District has countered the Petitioner's request with a request of its own. The District wants the PELRB to modify the KEA by incorporating the petitioning tutors into the long standing teachers' bargaining unit. The PELRB is guided in its administration by rules that, in this instance, would require the District to file a Petition for Modification. Pub 302.05. Notwithstanding that it did not do so, the Petitioner engaged with the District and presented "Stipulations of the Parties" to the PELRB instead of filing any dispositive motion, e.g. Motion for Summary Judgement. Therefore, the PELRB proceeded, without any preliminary rulings on the matter, with the scheduled hearing to both serve the parties' expressed desire and to satisfy the overall purpose of our governing statute. See, Statement of Policy, 1975, 490:1, eff. Dec. 21, 1975.

The District would have an emerging bargaining unit, Keene Tutors Association, combined with a mature unit that has had nearly a thirty year history of workable and acceptable collective negotiations (Association Exhibit #1) and has been on record with the PELRB as the exclusive bargaining representative since December 7, 1976. (See Association Exhibit #2). The Keene Education Association is presently a party to a four year collective bargaining agreement expiring on June 30, 2002. That document reflects the "give and take" and other warranted compromises over the three decades that these parties have negotiated certain employee wages, benefits and conditions of work. While the petitioning tutors feel a self-felt community of interest among themselves, (See Stipulation of the Parties), the Keene Education Association does not feel a self-felt community of interest with the nascent group of tutors. (See Statement of Mary E. Gaul).

After examining the District's reasoning that certain inefficiencies would attach to the District's operation with the creation of a bargaining unit of tutors distinct from the existing KEA (i.e., scheduling negotiation sessions, manipulation of computer data, and costs of additional negotiations), the PELRB is not persuaded that any significant inefficiencies exist to offset the right of the tutors to join together as a separate bargaining unit to collectively bargain for their own wages, benefits and conditions of work. Further, the testimony indicated that the computer modification would be minimal, the scheduling of sessions would be facilitated by the proposed unit having the same representative participating in negotiations, and the cost differentiation would be negligible whether the District was involved in a separate agreement with the KTA or a more complicated combined collective bargaining agreement with the KEA. The District's evidence of alleged adverse affects on government efficiencies is insufficient to cause the PELRB to ignore the reality of the election and certification process. The KEA has approximately 392 voting members who have expressed their sentiments through their spokesperson's written statement not to incorporate the tutors into their bargaining unit at this time. There is no sufficient reason to believe their sentiments as expressed in a certification election would be different. There are 98 tutors.

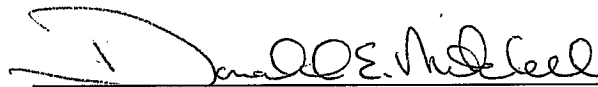
To force a protracted election process upon two groups, one of which has negotiated many collective bargaining agreements, is already into negotiations for their next CBA and do not want to be combined for purposes of collective bargaining with the newer group, would be futile. More importantly, it would serve to delay and adversely affect the long standing relationship between the KEA and the District needlessly. Lastly,

it would handicap the precepts incorporated into the statutory provisions (See RSA-A:3, 5, 10, and 11) and administrative rules (See Pub Chapter 300, generally) that collective bargaining be conducted in a timely, orderly and reasonable manner and that harmonious relations be supported between public employers and their employees.

The PELRB believes that the rights intended to be extended to public employees by the enabling nature of RSA 273-A are best served by allowing the petition of the Keene Tutors Association under these circumstances. Therefore, the petition is GRANTED and an Order of Election shall issue immediately for the tutors employed within the Keene School District.

So Ordered.

This 2nd day of October, 2001



Donald E. Mitchell, Esquire
Hearing Officer